

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stephen DiFiore	Team: Squad #05	CCRB Case #: 202004203	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 06/02/2020 8:20 PM, Wednesday, 06/03/2020 12:02 AM	Location of Incident: West Street between Morris Street and Carlisle Street; Brooklyn Central Booking	18 Mo. SOL 5/4/2022	Precinct: 01		
Date/Time CV Reported Fri, 06/12/2020 10:54 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 06/12/2020 10:54 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			
2. POM Ray Soriano	27412	956275	042 PCT
3. An officer			
4. SGT Elliot Zinstein	05494	947634	TRN BUR
5. POM Marlon George	19193	932706	BKLN CT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. INS Michele Irizarry	00000	915113	PBMS
2. POF Crystal Washington	20523	968187	040 PCT
3. LT William Buchanan	00000	924993	DET BUR
4. POM Robert Harrington	30008	965171	040 PCT
5. POM Michael Loso	10587	932922	PBMS
6. POM Joan Cordero	10643	961709	042 PCT
7. POF Merlyn Gonzalez	15195	967900	042 PCT
8. POF Jamilet Rosario	27058	967309	042 PCT
9. POM Rubenson Marcellus	14793	956063	042 PCT
10. POM James Dougan	05712	960477	042 PCT
11. POM Matthew Velger	10295	951385	042 PCT
12. POM Rudy Cruz	15892	950251	042 PCT
13. POM Roberto Gomez	06769	952791	MTS PCT
14. DT3 Nicholas Atsaves	6769	952430	VED ZN2
15. POM Riviere Adhemar	02753	923422	TB DT33
16. SDS Gilbert Noa	02753	915156	041 DET
17. DT3 Edgardo Ortiz	02753	949427	NARCB BX
18. LT Patrick Welsh	00000	923357	110 PCT
19. PA Harris Papadopoulos	00000	363212	BKLN CT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Elliot Zinstein	Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein used physical force against an individual.	
B.SGT Elliot Zinstein	Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein used physical force against an individual.	
C.SGT Elliot Zinstein	Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein struck an individual with a baton.	
D.SGT Elliot Zinstein	Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein struck an individual with a baton.	
E.SGT Elliot Zinstein	Discourtesy: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein spoke discourteously to individuals.	
F. An officer	Abuse: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer threatened § 87(2)(b) with the use of force.	
G. An officer	Discourtesy: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer spoke discourteously to § 87(2)(b)	
H.SGT Elliot Zinstein	Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein struck § 87(2)(b) with a baton.	
I.SGT Elliot Zinstein	Abuse: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein interfered with § 87(2)(b) use of a recording device.	
J.POM Ray Soriano	Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Police Officer Ray Soriano struck § 87(2)(b) with a baton.	
K. An officer	Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer struck § 87(2)(b) with a baton.	
L. An officer	Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer used physical force against § 87(2)(b)	
M. An officer	Abuse: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer seized § 87(2)(b) property.	
N. Officers	Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, officers struck § 87(2)(b) with batons.	
O. An officer	Off. Language: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
P. An officer	Discourtesy: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer spoke discourteously to § 87(2)(b)	
Q. An officer	Discourtesy: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer spoke discourteously to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
R. Officers	Discourtesy: On June 2, 2020, on West Street between Morris Street and Carlisle Street, officers spoke discourteously to individuals.	
S.SGT Elliot Zinstein	Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein struck an individual with a baton.	
T.POM Marlon George	Off. Language: On June 3, 2020 at Brooklyn Central Bookings, Police Officer Marlon George made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
U.POM Marlon George	Discourtesy: On June 3, 2020 at Brooklyn Central Bookings, Police Officer Marlon George spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On June 12, 2020, § 87(2)(b) filed this complaint on behalf of himself and his wife, § 87(2)(b) via the CCRB call processing system.

On June 2, 2020, at approximately 8:20 p.m., Sergeant Eliot Zinstein of the Training Bureau and Police Officer Ray Soriano of the 42nd Precinct responded to the southern portion of West Street in Manhattan for a large-scale protest. On West Street between Morris Street and Carlisle Street, Sgt. Zinstein shoved an unidentified protester, shoved another unidentified protester and struck him with a baton, and shoved a third unidentified protester with a baton (**Allegations A-D: Force**, § 87(2)(g)). Sgt. Zinstein and PO Soriano encountered § 87(2)(b) and § 87(2)(b) at the intersection of West Street and Rector Street. Sgt. Zinstein allegedly told unidentified civilians to “move the fuck back” (**Allegation E: Discourtesy**, § 87(2)(g)). An officer allegedly told § 87(2)(b) that he would “beat the shit” out of him (**Allegations F: Abuse of Authority**, § 87(2)(g)). **Allegation G: Discourtesy**, § 87(2)(g). Sgt. Zinstein struck § 87(2)(b) with his baton (**Allegation H: Force**, § 87(2)(g)). Sgt. Zinstein then took § 87(2)(b) to the ground, causing her to drop the phone she was using to record (**Allegations I: Abuse of Authority**, § 87(2)(g)). As § 87(2)(b) picked up § 87(2)(b) phone, PO Soriano approached him and struck him with his baton (**Allegation J: Force**, § 87(2)(g)). An unidentified officer also struck § 87(2)(b) with a baton (**Allegation K: Force**, § 87(2)(g)). The same unidentified officer then tackled § 87(2)(b) (**Allegation L: Force**, § 87(2)(g)). While on the ground, an unidentified officer pried the phone out of § 87(2)(b) hands (**Allegation M: Abuse of Authority**, § 87(2)(g)). Multiple unidentified officers then struck § 87(2)(b) with their batons while holding him on the ground (**Allegation N: Force**, § 87(2)(g)). An officer allegedly called § 87(2)(b) “sweetie” while she was on the ground (**Allegation O: Offensive Language**, § 87(2)(g)). **Allegation P: Discourtesy**, § 87(2)(g).

While § 87(2)(b) and § 87(2)(b) waited with other apprehended protesters, an unidentified officer allegedly told § 87(2)(b) of her phone, “That shit is gone” (**Allegation Q: Discourtesy**, § 87(2)(g)). Unidentified officers allegedly told protesters to “shut the fuck up” while they waited for transport (**Allegation R: Discourtesy**, § 87(2)(g)). Officers then removed § 87(2)(b) and § 87(2)(b) to Brooklyn Central Booking (BCB).

After apprehending § 87(2)(b) Sgt. Zinstein continued to move north on West Street toward Carlisle Street. He approached an unidentified individual, placed him into custody, and struck him twice in the leg with a baton (**Allegation S: Force**, § 87(2)(g)).

On June 3, 2020, at approximately 12:01 a.m., at Brooklyn Central Booking, Police Officer Marlon George of Brooklyn Court Section allegedly said of § 87(2)(b) “We don’t take off handcuffs in this public space without them being searched. Especially females because you can’t expect a female to not attack if you take her phone away” (**Allegation T: Offensive Language**, § 87(2)(g)). **Allegation U: Discourtesy**, § 87(2)(g), § 87(4-b). § 87(2)(b) and § 87(2)(b) were released with summonses for violating the Mayor’s executive order imposing a curfew (BR 01).

The investigation obtained BWC footage from numerous officers (BR 02), but only Sgt. Zinstein’s footage clearly captures FADO allegations relevant to this case (BR 03). The investigation also obtained CCTV footage from Brooklyn Central Booking (Original video in BR 04, relevant CTS-playable footage in BR 05-06, summarized in BR 07). The New York State Attorney General’s Office also provided a single video recorded by an unidentified protester (BR 08). The investigation also obtained handheld TARU footage which briefly captures some of the force used against § 87(2)(b) but does not provide any additional information relevant to this case (BR 09). All references to video below refer to the timestamp in the video player and not to any on-screen

timestamps.

This case was marked as sensitive due to § 87(2)(b) providing a statement about this protest to The City for an article published on June 10, 2020 (BR 10). The CCRB conducted multiple separate investigations as a result of complaints regarding this broader protest incident on West Street: 20210621, 202106129, 202100268, 202004315, 202004232, 202004222, 202004048, and 202003978. 202004315 involved a substantiated physical force allegation against Sgt. Zinstein. This investigation was delayed due to the COVID pandemic.

PO Soriano has subsequently been reassigned to the 43rd Precinct. Sgt. Zinstein has been reassigned to Command Level Training (code BN03).

Findings and Recommendations

Allegation (A) Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein used physical force against an individual.

Allegation (B) Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein used physical force against an individual.

Allegation (C) Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein struck an individual with a baton.

Allegation (D) Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein struck an individual with a baton.

Sgt. Zinstein's BWC footage (BR 03, beginning at 03:07) shows that there were numerous officers and civilians on West Street after the curfew went into effect. At 03:07, the footage shows Sgt. Zinstein walking north on West Street and instructing a crowd to move north. Sgt. Zinstein turns to his right and sees a male protester in a green jacket walking backwards with his hands up. It is apparent that the protester in the green jacket is moving north to retreat from a different line of officers, and that Sgt. Zinstein happened to advance ahead of him such that the protester crosses beside Sgt. Zinstein as he retreats from the officers. Sgt. Zinstein shoves the protester on the right side of his torso, causing him to momentarily stumble. Sgt. Zinstein takes no further action against this individual and does not instruct any other officer to do so.

At 03:09, Sgt. Zinstein tells another man wearing all black to "move," then pushes him while again telling him to "move." The man continues walking backward away from Sgt. Zinstein and tells Sgt. Zinstein to "fuck off." Sgt. Zinstein tells him to "move back," and the man replies, "I'm moving back. Why don't you fucking move back?" Sgt. Zinstein continues to tell him to move back as the man is walking backwards. Sgt. Zinstein shoves him with his baton, and then strikes him with a baton swing. The man moves Sgt. Zinstein's arm away from him as he finishes swinging. Sgt. Zinstein then swings his baton at him again before turning around and yelling "collar" multiple times. The man then runs north on West Street.

At 04:49, Sgt. Zinstein approaches a man wearing a surgical mask and a bandana and tells him to move back. The man is already walking backwards away from Sgt. Zinstein with his hands up. Sgt. Zinstein tells him, "Keep going. You're too close to me," while walking toward the man. Sgt. Zinstein then shoves him in the torso with his baton.

The investigation was unable to identify the victims of these allegations.

Sgt. Zinstein was interviewed approximately 18 weeks after the incident. His memory of the incident was extremely limited (BR 11). He remembered that upon arriving at West Street, he received a briefing from someone whom he believed to be his assigned lieutenant, but he did not remember who his lieutenant was that night. He further did not remember any details about the briefing at the time of his interview. He further remembered that protesters were blocking the road when he arrived, but he otherwise did not remember how many protesters were present, what

they were doing, and if he observed them committing any offenses other than blocking the road after the curfew. He confirmed that he did not place handcuffs on anyone or process any arrest reports related to the incident. He assisted other officers with taking people into custody, but he did not personally take anyone into custody. He did not remember if he ever ordered any officers to arrest anyone. He did not remember if any protesters tried to interfere with him during the incident.

Upon reviewing the video footage described above, Sgt. Zinstein's only stated reason for shoving the first protester in the green jacket (at 03:07) was to get him to move back. When asked to explain why he shoved and struck the protester in all black with his baton (at 03:09), Sgt. Zinstein said that he wanted him to move back farther than he already was. Sgt. Zinstein acknowledged, however, that the protester was already moving back. When asked to explain why he shoved the man in the surgical mask with his baton (at 04:49), Sgt. Zinstein again said that he was trying to get people to move back and was using his baton to do so.

Patrol Guide Procedure 221-01 states that officer may use force it is reasonable to ensure the safety of officers or civilians, or to otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances and not excessive. When appropriate and consistent with personal safety, officers will use de-escalation techniques to gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. The factors to consider when determining whether a use of force is reasonable include the nature and severity of the crime or circumstances, actions taken by the civilian and their duration, the immediacy of the perceived threat of harm, whether the civilian is resisting arrest or attempting to evade by flight, the number of civilians in comparison to the number of officers, the civilian's violent history, the presence of a hostile crowd, the civilian's relative size, age, and condition compared to the officer, and whether the civilian is apparently under the influence of a substance which would increase pain tolerance or the likelihood of violence (BR 13).

§ 87(2)(g)

The footage did not display any objective basis for Sgt. Zinstein to have believed the civilians presented a safety threat. He claimed that he used force solely to make each civilian move back, but his BWC footage clearly showed that the civilians were already complying and moving away from him when he used force against them. The footage did not show any of the individuals approaching or acting physically aggressive toward Sgt. Zinstein or any other person nearby *before* Sgt. Zinstein used force against them, and Sgt. Zinstein did not claim as much in his interview. In addition, it was clear that Sgt. Zinstein did not suspect the civilians of any crime other than violating curfew and walking in the roadway, and the footage made clear that he did not begin using force against any of them in order to apprehend them. While he did eventually call upon other officers to apprehend the second protester dressed in black, he did so only after he first pushed that protester and struck him with his baton. Although Sgt. Zinstein was interacting with members of a large crowd, he was also among a large crowd of officers. Overall, Sgt. Zinstein's choice to shove and strike the protesters when they were already complying with the order to move back was inconsistent with the Patrol Guide's emphasis on using de-escalation to avoid the need for physical force.

§ 87(2)(g)

Allegation (E) Discourtesy: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein spoke discourteously to individuals.

§ 87(2)(b) testified that he was among the crowd of protesters marching southbound on West Street, and that he encountered a line of officers who instructed the crowd to start moving back

(BR 14). Sgt. Zinstein was among those who were instructing demonstrators to move back. § 87(2)(b) alleged that Sgt. Zinstein said, “Move the fuck back,” to the protesters. § 87(2)(b) also testified to hearing officers use the phrase “Move the fuck back,” but she was unable to say if Sgt. Zinstein made the remark (BR 15).

Sgt. Zinstein’s BWC shows what Sgt. Zinstein did and said while in the vicinity of § 87(2)(b) and § 87(2)(b) (BR 03). At no point does it capture him using profanity to issue any orders. § 87(2)(g)

Allegation (F) Abuse of Authority: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer threatened § 87(2)(b) with the use of force.

Allegation (G) Discourtesy: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that, at the time the officers began “charging” at the protesters, he got the attention of white-shirted officer and asked him, “Could you control your officers?” The officer replied, “I will beat the shit out of you.” § 87(2)(b) could only describe the officer as a white man who was tall, well-built, thick-necked, and clean-shaven.

Sgt. Zinstein’s BWC footage provided the best view of § 87(2)(b) and § 87(2)(b) in the moments before officers apprehended them. The footage did not capture any conversation between § 87(2)(b) and a white-shirted officer during that time period (BR 03).

The investigation obtained detail rosters showing at least some of the officers assigned to this particular protest march. The rosters included numerous white male officers who would have been wearing white uniform shirts, such that the investigation could not use the rosters to identify the subject of these allegations, especially absent a more specific physical description or any identifying information for the officer (BR 16).

§ 87(2)(g)

Allegation (H) Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein struck § 87(2)(b) with a baton.

Allegation (I) Abuse of Authority: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein interfered with § 87(2)(b) use of a recording device.

It is undisputed that § 87(2)(b) and § 87(2)(b) were violating the curfew and walking in the roadway. It is further undisputed that Sgt. Zinstein struck § 87(2)(b) with his baton in a shoving motion and knocked her to the ground.

§ 87(2)(b) recounted that Sgt. Zinstein was among a line of officers who advanced toward the protesters. The protesters responded by putting their hands up and chanting while walking backwards away from the officers. § 87(2)(b) filmed with her cellphone as she walked backwards. Sgt. Zinstein then “attacked” § 87(2)(b). She believed he first struck her with his baton, and she landed facedown on the road. Sgt. Zinstein’s use of force against her also caused her to drop her phone.

Sgt. Zinstein’s BWC footage captured this portion of the incident (see Sub-clip #1 at BR 31). Sgt. Zinstein and other officers advanced north while repeatedly instructing protesters to “move back,” and he held his baton sideways in front of him. § 87(2)(b) walked forward into Sgt. Zinstein, and Sgt. Zinstein pushed him backward with his baton. § 87(2)(b) stepped up while holding her phone in front of her, briefly stopped walking backward, gestured with a pointed finger, and yelled, “Get off him! Don’t fucking touch him!” Sgt. Zinstein pushed her backward with his baton as he continued walking north. § 87(2)(b) then moved farther away from Sgt. Zinstein,

and she and § 87(2)(b) continued backing away from the advancing line of officers. Approximately five seconds later, other officers began grabbing and apprehending protesters who were behind § 87(2)(b) and § 87(2)(b). Sgt. Zinstein then lunged at § 87(2)(b) holding his baton horizontally with a hand at either end, and struck her with the baton around her upper chest or neck (see screenshots at BR 33). Sgt. Zinstein's baton appears to have struck § 87(2)(b) cellphone as well. Both § 87(2)(b) and Sgt. Zinstein fell to the ground. Sgt. Zinstein did not issue any instructions to § 87(2)(b) or inform her she was under arrest, or attempt to grab her before striking her with his baton.

As noted above, Sgt. Zinstein did not testify to having any independent recollection of his interactions with § 87(2)(b) and § 87(2)(b) and therefore did not discuss this specific portion of the incident prior to reviewing his BWC footage at the conclusion of his interview. He testified generally he would use his baton to push people back but would use a baton strike when his personal safety was threatened. He also noted that officers are supposed to avoid striking fragile areas such as the neck or groin, if possible. After reviewing the BWC footage, Sgt. Zinstein still did not recall this portion of the incident, but he testified that he took § 87(2)(b) to the ground because she was not moving back, she was violating the curfew, and she was walking in the roadway.

New York City Administrative Code 3-108 states, "Any knowing violation of a provision of any emergency measure established pursuant to this chapter [the Mayor] shall be a class B misdemeanor" (BR 18). In Mayoral Emergency Executive Order 118, issued on June 1, 2020, Mayor Bill de Blasio ordered "a City-wide curfew from 8:00pm on June 2, 2020 until 5:00am on June 3, 2020. During this time, no persons or vehicles may be in public" (BR 19).

Patrol Guide Procedure 221-01 states that officer may use force it is reasonable to ensure the safety of officers or civilians, or to otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances and not excessive. When appropriate and consistent with personal safety, officers will use de-escalation techniques to gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. The factors to consider when determining whether a use of force is reasonable include the nature and severity of the crime or circumstances, actions taken by the civilian and their duration, the immediacy of the perceived threat of harm, whether the civilian is resisting arrest or attempting to evade by flight, the number of civilians in comparison to the number of officers, the civilian's violent history, the presence of a hostile crowd, the civilian's relative size, age, and condition compared to the officer, and whether the civilian is apparently under the influence of a substance which would increase pain tolerance or the likelihood of violence (BR 13).

§ 87(2)(g)

§ 87(2)(g) If, as the video footage appears to indicate, Sgt. Zinstein saw other officers making arrests and decided to apprehend § 87(2)(b) he could have taken a number of far less violent steps to do so, such as by telling her she was under arrest, ordering her to put her hands behind her back, or grabbing her with his hands. § 87(2)(g)

There was no indication from the video footage that Sgt. Zinstein specifically intended to knock § 87(2)(b) phone from her hand, much less that he did so in an attempt to interfere with her ability to film the incident. § 87(2)(g)

Allegation (J) Force: On June 2, 2020, on West Street between Morris Street and Carlisle

Street, Police Officer Ray Soriano struck § 87(2)(b) with a baton.
Allegation (K) Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer struck § 87(2)(b) with a baton.
Allegation (L) Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer used physical force against § 87(2)(b)
Allegation (M) Abuse of Authority: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer seized § 87(2)(b) property.
Allegation (N) Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, officers struck § 87(2)(b) with batons.

§ 87(2)(b) testified that he went to retrieve § 87(2)(b) phone from the ground. He did not say that any officers struck him with batons at that point. He picked up the phone and then approached Sgt. Zinstein. He put his hands up, told Sgt. Zinstein that § 87(2)(b) was not resisting, and told him to get off of her (BR 14). An officer, whom § 87(2)(b) did not see, tackled him from behind. Multiple officers, whom he also could not see and could not describe, then struck him with batons while he was on the ground. § 87(2)(b) also felt an officer pry § 87(2)(b) cellphone out of his hand.

§ 87(2)(b) provided photographs of his injuries, which showed bruising on his right upper arm, an abrasion on his left shoulder, redness on his right shoulder, and injuries consistent with being handcuffed (BR 21).

Sgt. Zinstein's BWC footage captured this portion of the incident (see Sub-clip #1 at BR 31, at approximately 00:15). § 87(2)(b) falls to the ground, rises on one knee, and picks up § 87(2)(b) cellphone. At the same time, an unidentified white male officer in a white uniform shirt holds his baton with two hands and forcefully swings it like a baseball bat, striking § 87(2)(b) in the lower body. At the same time, PO Soriano approaches from § 87(2)(b) right side. § 87(2)(b) does not appear to touch either officer or to make any motion consistent with intending to use force against them. As § 87(2)(b) begins to stand up, PO Soriano strikes him with his baton twice. PO Soriano strikes him once more as § 87(2)(b) runs away. PO Soriano makes no attempt to grab § 87(2)(b). The white-shirted officer appears to wind up in anticipation of striking § 87(2)(b) again. § 87(2)(b) moves toward Sgt. Zinstein and obscures the camera's view, however, so it is not clear whether the white-shirted officer did strike him a second time.

§ 87(2)(b) runs up to Sgt. Zinstein, who has just gone to the ground with § 87(2)(b). § 87(2)(b) appears to touch Sgt. Zinstein's torso, as his hands momentarily obscure Sgt. Zinstein's BWC. Immediately afterwards, the white-shirted officer who had struck § 87(2)(b) with his baton approaches him from behind and tackles him to the ground, and then strikes § 87(2)(b) with the butt end of his baton twice in a jabbing motion. No other officer around him is visible such that the investigation could identify them. The footage does not have a view of § 87(2)(b) on the ground and does not capture any other officer striking him with a baton. The footage also confirms that § 87(2)(b) was holding the phone at the time he was tackled, but it does not have a view of him afterward and does not capture any officer prying the phone out of his hand.

Sgt. Zinstein's footage captured a clear image of PO Soriano just over a minute before the interaction with § 87(2)(b) and § 87(2)(b) began (see three screenshots at BR 29). The footage shows that PO Soriano was walking beside Sgt. Zinstein as they advanced north toward the protesters. The footage shows that PO Soriano's helmet visor was lowered, that he had no shield number on his helmet, that he was wearing a black watch on his left wrist, and that his radio's separate handheld speaker/microphone was secured atop his left shoulder. He had distinctive salt-and-pepper facial hair about his chin, which is also seen in his MOS photograph (BR 28). Sgt. Zinstein's footage (BR 03 at 05:06) also confirms that PO Soriano was walking on Sgt. Zinstein's right side just seconds before this portion of the incident.

PO Soriano confirmed that Sgt. Zinstein was his direct supervisor at the time of the incident

(BR 34). He recalled being near Sgt. Zinstein during part of the incident, but also recalled eventually becoming separated from him. He did not have a detailed recollection of the incident, beyond that he recalled seeing protesters running around, resisting, and pushing officers back. He saw multiple protesters being arrested, and he stopped to help a white-shirted officer who was handcuffing a protester. He knew he ultimately issued summonses to § 87(2)(b) and § 87(2)(b) but he could not recall if he was involved in apprehending them and did not recall any other details about their arrests. He could not recall if he used his baton against either § 87(2)(b) or § 87(2)(b). His only recollection of using his baton during this incident was of swinging it at someone, missing them, striking it against the sidewalk, and feeling the resultant buzzing in his hands.

PO Soriano reviewed Sgt. Zinstein's BWC footage, and he identified himself in the footage approximately one minute before Sgt. Zinstein took § 87(2)(b) to the ground. However, he said he could not definitively identify himself when he briefly appears on Sgt. Zinstein's right side just before Sgt. Zinstein takes § 87(2)(b) to the ground, and he similarly could not tell if he was the officer later seen striking § 87(2)(b) multiple times with a baton. PO Soriano acknowledged that the officer in the footage could be him, but he could not say with certainty. PO Soriano confirmed that he was wearing a black Apple Watch on his left wrist during the incident. Ultimately, PO Soriano testified that watching the BWC footage did not refresh his recollection, and that he still did not recall witnessing § 87(2)(b) apprehension. As a result, he did not provide any testimony regarding why he struck § 87(2)(b) with his baton.

It is clear from Sgt. Zinstein's BWC footage that PO Soriano is the blue-shirted officer seen striking § 87(2)(b) with a baton. The officer's appearance is exactly the same as the appearance of PO Soriano in the footage, and PO Soriano was clearly walking beside Sgt. Zinstein immediately beforehand.

The investigation was unable to identify the white-shirted officer. None of the video footage obtained from this incident captured a clear image of his face, nameplate, command, or any other characteristic which would aid in identifying him. The TARU handheld video footage briefly captured a view of the officer as he knelt on the ground shortly after this portion of the incident, but it also did not capture any information to aid in identifying him (BR 09, at approximately 01:10). The sides of his riot helmet did not have shield number stickers, which is consistent with his white shirt, as officers at the rank of lieutenant or above do not have shield numbers. As previously noted, there were numerous white male officers who would have been wearing white shirts assigned to the event. Neither Sgt. Zinstein nor PO Soriano could identify this officer in their interviews (BR 11; BR 20).

Absent more comprehensive video footage, the investigation also could not determine if additional officers struck § 87(2)(b) with batons on the ground and pried the phone from his hands, much less identify the correct subject officers for those allegations.

Patrol Guide Procedure 221-01 states that officer may use force it is reasonable to ensure the safety of officers or civilians, or to otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances and not excessive. When appropriate and consistent with personal safety, officers will use de-escalation techniques to gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. The factors to consider when determining whether a use of force is reasonable include the nature and severity of the crime or circumstances, actions taken by the civilian and their duration, the immediacy of the perceived threat of harm, whether the civilian is resisting arrest or attempting to evade by flight, the number of civilians in comparison to the number of officers, the civilian's violent history, the presence of a hostile crowd, the civilian's relative size, age, and condition compared to the officer, and whether the civilian is apparently under the influence of a substance which would increase pain tolerance or the likelihood of violence (BR 13).

PO Soriano claimed not to recall this portion of the incident and thus was unable to provide a justification for why he struck § 87(2)(b) with his baton multiple times. The BWC footage does not provide any apparent reason for PO Soriano's decision to immediately begin striking § 87(2)(b).

§ 87(2)(b) as § 87(2)(b) was retrieving a phone from the ground, made no physical motions or threats consistent with an intent to use force against officers, and had not yet approached and touched Sgt. Zinstein. § 87(2)(g)

The white-shirted officer who struck § 87(2)(b) with a baton when he was retrieving the phone § 87(2)(g)

§ 87(2)(g)

Absent testimony from the white-shirted officer and footage showing what § 87(2)(b) was doing when that officer jabbed him with a baton on the ground, § 87(2)(g)

Allegation (O) Offensive Language: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer made remarks to § 87(2)(b) based upon the gender of

§ 87(2)(b)

Allegation (P) Discourtesy: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer spoke discourteously to § 87(2)(b)

§ 87(2)(b) testified that while she was on the ground, she pleaded with a nearby white-shirted officer to help her, and that this officer responded, “Relax, sweetie, relax” (BR 15). She could only describe the officer as a heavyset white man with a red face and short hair.

Sgt. Zinstein’s BWC confirms that there was a white-shirted officer kneeling beside § 87(2)(b) (BR 03 at approximately 05:24). The footage does not capture the officer’s face or any other identifying information, except that he wore what appeared to be a Strategic Response Group (SRG) patch on his left arm (see screenshot at BR 30). The detail rosters and other documents listed a large number of white-shirted officers from SRG commands, however, such that the investigation could not make reasonable attempts to identify the subject officer while lacking additional identifying information or even a view of his face. Sgt. Zinstein was unable to identify this officer.

§ 87(2)(g)

Allegation (Q) Discourtesy: On June 2, 2020, on West Street between Morris Street and Carlisle Street, an officer spoke discourteously to § 87(2)(b)

Allegation (R) Discourtesy: On June 2, 2020, on West Street between Morris Street and Carlisle Street, officers spoke discourteously to individuals.

§ 87(2)(b) testified that she was among a group of protesters who waited in handcuffs for a transport vehicle to arrive. During this time, she asked an officer if anyone had her phone, and the officer responded, “That shit is gone.” She further testified that officers were generally telling individuals to “shut the fuck up” as they walked by the group of arrestees. § 87(2)(b) could provide no more detailed description of any of these officers beyond that they were dressed in uniform.

Some of the BWC footage captured § 87(2)(b) and § 87(2)(b) being placed in a van with other protesters, but none of the footage captured any of the conversations or remarks described by § 87(2)(b). Additionally, as § 87(2)(b) testified that some of these comments

were made as officers were walking by, the subject officers could conceivably have been from any command or unit in the general area of the demonstration at the time. As such, the investigation was unable to identify any of the officers who allegedly made the profane remarks.

§ 87(2)(g)

Allegation (S) Force: On June 2, 2020, on West Street between Morris Street and Carlisle Street, Sergeant Elliot Zinstein struck an individual with a baton.

The bystander cellphone video shows Sgt. Zinstein approach a man with a bicycle standing in the roadway on West Street (BR 08). The man stands still with his bicycle sideways in front of him. Sgt. Zinstein grabs the handlebars and motions north with his baton. The cyclist remains stationary, and Sgt. Zinstein goes behind him and starts pushing on the back of his neck. A white-shirted officer grabs the bicycle and the cyclist, at which point Sgt. Zinstein steps back and strikes the cyclist twice in the lower body with his baton. The crowd of protesters audibly yells in response to Sgt. Zinstein's use of force. Lieutenant William Buchanan of the Gun Violence Suppression Division pulls Sgt. Zinstein away and speaks to him as other officers take the cyclist into custody. The video shows only one other protester standing near the cyclist at the time, and that protester took no apparent actions beyond standing still with his hands up.

Sgt. Zinstein's BWC footage also captured this portion of the incident (see Sub-clip #2 at BR 32). Prior footage shows that he stood up and continued moving north shortly after officers brought § 87(2)(b) to the ground. Approximately 90 seconds later, he approaches the cyclist and says, "Go," while pointing north. At this point, the retreating line of protesters is a few feet northbound on West Street. Some of the protesters continue retreating north, and some remain stationary, but none is within arm's reach of Sgt. Zinstein. The cyclist says something inaudible in response, and Sgt. Zinstein says, "No problem." Sgt. Zinstein then uses the physical force described above.

The investigation was unable to identify the cyclist whom Sgt. Zinstein struck with his baton.

As noted, Sgt. Zinstein initially testified to having very little recollection of his actions during this incident. He did not recall interacting with anyone who was on a bicycle. After reviewing his BWC footage, Sgt. Zinstein maintained that he did not recall approaching the cyclist and did not recall what the cyclist said to him. When asked why he struck the cyclist with his baton, Sgt. Zinstein testified that the cyclist was not complying with his orders and had a bicycle in his hands, so Sgt. Zinstein struck him in the lower leg to gain compliance.

Lt. Buchanan testified that he pulled Sgt. Zinstein away because he had walked too far ahead of the other officers, and he was concerned for his safety as a result (BR 22). Lt. Buchanan testified that Sgt. Zinstein's use of force did not factor into his decision to pull him away. Lt. Buchanan was unable to confirm or deny if Sgt. Zinstein's use of force against the cyclist was excessive, as he said he did not know enough about the interaction.

Patrol Guide Procedure 221-01 states that officer may use force it is reasonable to ensure the safety of officers or civilians, or to otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances and not excessive. When appropriate and consistent with personal safety, officers will use de-escalation techniques to gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. The factors to consider when determining whether a use of force is reasonable include the nature and severity of the crime or circumstances, actions taken by the civilian and their duration, the immediacy of the perceived threat of harm, whether the civilian is resisting arrest or attempting to evade by flight, the number of civilians in comparison to the number of officers, the civilian's violent history, the presence of a hostile crowd, the civilian's relative size, age, and condition compared to the officer, and whether the civilian is apparently under the influence of a substance which would increase pain tolerance or the likelihood of violence (BR 13).

It is clear that the cyclist did not obey Sgt. Zinstein's order to move, § 87(2)(g)

§ 87(2)(g)

Other officers were already grabbing the cyclist, who appeared at most to be standing still and continuing to hold onto his bicycle. § 87(2)(g)

In addition, the one protester who remained nearby at the time took no action other than standing still with his hands up. § 87(2)(g)

Allegation (T) Offensive Language: On June 3, 2020 at Brooklyn Central Bookings, Police Officer Marlon George made remarks to § 87(2)(b) based upon the gender of

§ 87(2)(b)

Allegation (U) Discourtesy: On June 3, 2020 at Brooklyn Central Bookings, Police Officer Marlon George spoke discourteously to § 87(2)(b)

§ 87(2)(b) recounted that she was in front of the front desk at Brooklyn Central Booking when Police Attendant Harris Papadopoulos removed her handcuffs (BR 15). As PA Papadopoulos removed her handcuffs, PO George, sitting behind the desk at this point, said to PA Papadopoulos, "What are you doing? You're not following protocol. We don't take off handcuffs in this public space without them being searched. Especially females because you can't expect a female to not attack if you take her phone away."

CCTV footage captures PA Papadopoulos removing § 87(2)(b) handcuffs in front of the intake desk (BR 05, at approximately 03:31:19). Starting at approximately 03:31:55, PA Papadopoulos visibly turns to speak to an officer behind the desk. Additional footage from the intake area shows that PO George was the officer sitting behind the front desk at the time (BR 06). PO Soriano is also seen standing nearby at the time.

PO George testified that he did not remember making the alleged remarks (BR 23). He denied that he ever made any remarks to any arrestee based on their gender. Neither PA Papadopoulos (BR 24) nor PO Soriano (BR 20) remembered PO George or anyone else making such a statement. PO George and PA Papadopoulos further did not remember any conversation about the procedure for removing handcuffs. Neither they nor PO Soriano were able to tell what conversation was being had at the point depicted in the CCTV footage.

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which either § 87(2)(b) or § 87(2)(b) have been a party (BR 25).
- PO Soriano has been a member of the NYPD for eight years and this is the first CCRB complaint to which he has been a subject.
- Sgt. Zinstein has been a member of the NYPD for 13 years and has been a subject in seven other CCRB complaints and 12 other allegations, of which one was substantiated:
 - **202004315 involved a substantiated allegation of physical force against Sgt. Zinstein. This case involved the same broader protest incident on West Street. The Board found that Sgt. Zinstein performed an unjustified takedown on an essential worker who happened to be walking in the vicinity of the protest. The Board recommended Command Discipline B, and the NYPD has not yet imposed discipline.**
- PO George has been a member of the NYPD for 18 years and this is the first CCRB complaint to which he has been a subject.

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